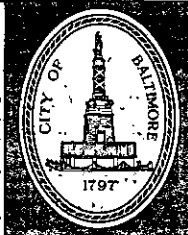


COMPTROLLER

JOAN M. PRATT, CPA  
Room 204, City Hall  
Baltimore, Maryland 21202-3461



OFFICE OF THE COMPTROLLER

Department of Audits  
Department of Real Estate  
Municipal Post Office  
Municipal Telephone Exchange  
Harbor Master

November 7, 2008

Received & Inspected

NOV 13 2008

**REQUEST FOR REVIEW BY  
FEDERAL COMMUNICATIONS COMMISSION  
CC Docket No. 02-6**

FCC Mail Room

IN THE MATTER OF  
REQUEST FOR REVIEW BY THE MUNICIPAL TELEPHONE EXCHANGE  
OF THE UNIVERSAL SERVICE ADMINISTRATOR'S DECISION

Date of Administrator's Decision on Appeal: September 9, 2008  
Billed Entity Name: Municipal Telephone Exchange  
Billed Entity# 147864  
Form 471 Application # 323349  
Funding Request #s 863036, 863072  
Funding Year: 2002-2003

**PARTY'S INTEREST IN THE MATTER**

The Municipal Telephone Exchange (MTE) is the billed entity for agencies within the City of Baltimore government and the Baltimore City School District, which was formerly a City of Baltimore agency. The MTE submitted reimbursement requests on behalf of the Baltimore City School District pursuant to Funding Request Numbers 863036 and 863072. As a result of a performance audit conducted by KPMG there were findings that funds disbursed under the referenced funding request numbers were recoverable.

After receiving demands for payment of improperly disbursed funds, subsequent to this audit, the MTE appealed to the Administrator on March 12, 2007. On September 9, 2008, the Administrator issued its decision on the appeal.

The MTE appeals the decision of the Administrator which determined that funds were improperly disbursed under Funding Request Numbers 863036 and 863072 in the amounts of \$612,363.00 and \$26,360.00, respectively.

**STATEMENT OF RELEVANT FACTS:**

**FRN 863036**

For Funding Year July 1, 2002 through June 30, 2002, both the MTE and the Baltimore City School District filed applications with the Universal Service Administrative Company for E-Rate funding. The MTE filed on behalf of the Baltimore City School District for telecommunication services only. The

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Baltimore City School District, under Beneficiary No. 126376, filed for services other than telecommunications services, which it procured on its own behalf.

The Baltimore City School District and the MTE were both audited at the same time by KPMG for funding year 2002-2003. There were two teams from KPMG; one came to the MTE and the other went to the Baltimore City School District. During the course of each audit, the respective audit team raised the question of the technology plan for the Baltimore City School District not being approved prior to the filing of the form 486. The final audit reports for the MTE and the Baltimore City School District were dated, January 22, 2006 and December 23, 2005, respectively.

**A. Audit of the Baltimore City School District**

During the course of the KPMG audit of the Baltimore City School District, an Application Process Finding #1 (Ex. 1) was presented to the Baltimore City School District. Finding #1 under condition stated:

“The Beneficiary submitted the FCC Form 471 on January 17, 2002. The Beneficiary did not have an approved Technology Plan, within the three year window, for funding year under audit. The Technology Plan was approved on May 7, 1998. On April 29, 2003, the Maryland Department of Education approved a Technology Plan which included the fiscal years 2002 through 2007. However, the plan was approved subsequently to the Beneficiary submitting the FCC Form 471 and receiving and approved FCC Form 486 #231180 on November 11, 2002.”

This Application Process Finding #1 however, was removed prior to the issuance of the final audit report for the Baltimore City School District for Funding Year 2002-2003.

**B. Audit of the Municipal Telephone Exchange**

Similarly during the audit of the MTE, this exact same issue was raised. The audit finding No. 147864-F2002-03 included in the final audit report stated:

“The BCPS, which is an entity receiving services under the MTE consortium, did not have their technology plan approved prior to the submission of the FCC Form 486 on October 28, 2002. The BCPS technology plan was not approved until April 29, 2003.

This is the exact, same issue that was identified during the course of the audit of the MTE and the Baltimore Public School District. The finding was removed for the Baltimore Public School District in the final audit report, but remained for the MTE in its final report. It was because of this difference in the findings in the

audit reports that the MTE appealed to the Schools and Libraries on March 12, 2007.

#### **FRN 863072**

On February 11, 2002 the MTE filed Form 471 on behalf of the Baltimore City School District. In Block 5 Discount Funding Request the MTE included ATX Telecommunication Services (ATX). Long distance was the only service ATX provided to the MTE.

On December 6, 2004 a Performance Audit of the MTE was begun by KPMG under the direction of the Universal Service Administrative Company. The audit report, dated, January 22, 2006 concluded under Audit Finding No. 147864-F2002-03:

“The BCPS, which is an entity receiving services under the MTE consortium, did not have their technology plan approved prior to the submission of the FCC Form 483 on October 28, 2002. The BCPS technology plan was not approved until April 29, 2003.”

As a result of this audit, a demand for payment of improperly disbursed funds was issued and the on March 12, 2007 the MTE filed an appeal with Schools and Libraries on behalf of the Baltimore City School District. During the course of the review of the appeal, the MTE provided information to substantiate that ATX provided only long distance services, and therefore, a technology plan was not required for FRN 863072.

There have been several transitions in the staff of the MTE who assisted with and or coordinated the E-rate application process. There appears to have been some errors made in the completion of the FCC forms during the period in question. However, the fact patterns in the two audits mitigate these errors. The current staff at the MTE has been to successive USAC trainings to prevent and or minimize errors in the future.

Pursuant to 47 CFR 419, the MTE respectfully requests the Federal Communications Commission to review the Administrator's denial of the appeal of the MTE on behalf of the Baltimore City School District and to reverse the Administrator's Decision of September 9, 2008.

#### **QUESTIONS PRESENTED**

##### **Funding Request Number 863036 – Technology Plan not approved prior to the filing of the Form 486**

1. Whether USAC should permit a negative fiscal impact on an entity because of inconsistent audit findings on the entity's compliance with the same regulation, when compliance was reviewed by two different KPMG audit teams?

The Baltimore Public School District responded during the audit that while its technology plan for 2002-2005 had not been approved in advance of the filing of the 486, it had previously presented a "working draft" of the technology plan to the approving authority, the Maryland State Department of Education (MSDE). It was the Baltimore Public School District's position that it had substantially complied with FCC Rule 54.504(b)(2)(v). In furtherance of this position it presented information to the KPMG audit team that based upon its review of "working draft" of the technology plan that the approving authority, the MSDE, provided the Baltimore City School District a grant for Funding Year 2002. Subsequent to the MSDE's grant of funds to the Baltimore City School District, it approved the technology plan for the period of 2002 through 2005 on April 29, 2003. This response was accepted for the Application Processing Finding # 1, and as a result this finding was not included in the final audit of the Baltimore City School District.

The MTE agrees with the assessment of the KPMG audit team that the technology plan finding should be removed from the final audit report of the Baltimore City School District for Funding Year 2002-2003. The MTE's position is that this is a sound basis for the Administrator to have upheld the appeal of the MTE and therefore, not seek recovery of funds.

The Administrator's Decision on Appeal, dated September 9, 2008, attempts to respond to the MTE's position that its appeal should be upheld because of the audit report of the Baltimore City School District lacked of finding on non compliance with requirement for the approval of the technology plan. However, the decision fails to offer an explanation that is in accord with the facts of the issue presented.

The Administrator in its decision on appeal, referring to the Baltimore City School District audit states,

"...Even though the technology plan approval was a concern initially, and listed in the preliminary reports by the auditors as a potential audit finding, it never appeared in the final audit report for Baltimore City SD because the technology plan was approved on April 29, 2003. Baltimore School District filed all Form 486's **before** the approval date. Consequently, your appeal is denied..."(emphasis added)

This rationale is illogical since the basis of appeal of then the MTE to the USAC rests on the same the set of facts as those in the audit of the Baltimore City School District. Those facts are that the technology plan for the Baltimore City School District was approved on April 29, 2003 and the auditors accepted the explanation of the Baltimore City School District and therefore, found that that it was in substantial compliance with the regulation on the technology plan. It is odd that two audit teams from the same firm, simultaneously reviewing the same issues, with the same facts, related to the same entity, would not confer to assure consistency of information and resultant findings on compliance.

In its appeal to the USAC on March 12, 2007, the MTE submitted the same facts as those submitted by the Baltimore City School District to the KPMG auditors. Further, the MTE requested that the USAC apply the same reasoning as the KPMG auditors did when its review determined that the Baltimore Public School District was in substantial compliance with the technology plan requirement for Funding Year 2002-2003.

**Funding Request Number 863072 – Technology Plan required for long distance services**

2. Whether the MTE requested reimbursement for long distance service when it filed the Form 471 for the Baltimore City School District?

The Administrator should not have denied the appeal because the Form 471 clearly identified ATX Telecommunications Inc. as a service provider. ATX Telecommunications, Inc was contracted by the MTE to provide long distance service only.

3. Whether a Technology Plan is required for long distance services only?

The Administrator should have granted the appeal because the MTE applied for funds for long distance service with ATX Telecommunications, Inc. as the long distance carrier. Per the Universal Service Administrative Company the definition of basic telephone service is as follows; "basic telephone service is defined as wireline or wireless single-line voice service (e.g., local, cellular, and/or long distance) as well as mandatory fees associated with such services (e.g., federal and state taxes, universal service fees, etc.)."

4. Whether the MTE provided sufficient documentation to support that the reimbursement request was for long distance service only?

The Administrator should have granted the appeal because the MTE clearly indicated on the Form 471 that it was requesting reimbursement for charges associated with ATX Telecommunications Inc. and it provided information that proved the services requested from ATX under FRN 863072 were only for long distance.

After the MTE filed its appeal to Schools and Libraries on March 12, 2007, the MTE received inquiries about the type of services provided under FRN 863072 and responded that the only services provided were long distance. It is unclear how it was determined that the services under FRN 863072 were not for basic telephone service, in this instance, long distance services only.

On August 3, 2007 and again on August 27, 2008 the MTE provided Mr. Tim Curtain, Program Compliance, Schools and Library Division, a copy of the Board of Estimates letter indicating its approval and the terms of the City of Baltimore's contract with ATX Telecommunications to provide long distance services to the City (Exhibit 2) and an

ATX invoice (Exhibit 3) which clearly indicates that the charges are for long distance services.

**RELIEF SOUGHT:**

The MTE respectfully requests the Federal Communications Commission to take the following actions in regard to the indicated FRNs:

**FRN 863036**

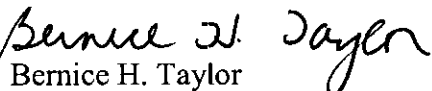
1. grant this appeal and find that based upon the KPMG audit of the Baltimore City School District that the Administrator erred by denying the appeal,
2. find that under FRN 863036 \$613,262.00 was properly disbursed because the final audit of the Baltimore City School District reflected a reasoned approach to compliance with FCC Rule 54.404 (b)(2)(v), and that the same entity (in this instance the Baltimore City School District), should not suffer an adverse result under a different audit, when the same facts are present,

**FRN 863072**

3. find that the ATX only provided long distance services to the MTE, and therefore a technology plan was not required and consequently, under FRN 863072 \$26,360.00 was properly disbursed.

The basis for this request for relief for FRN 863036 is supported by the final audit of the Baltimore City School District for Funding Year 2002 and the concurrence with that audit by the Administrator. The request for relief for FRN 863072 is supported by the Form 471, which indicated the services requested included those received via ATX Communications. Long distance is considered basic telephone service per USAC's listing of eligible services. Per FCC Rule 54.504(b)(2)(v) and the USAC implementation requirements, the entities receiving E-Rate supported services, **other than basic telephone service**, must have a technology plan, which has been approved by a USAC designated approver prior to the submission of the FCC Form 486. Even though the Form 486 was filed on October 28, 2002 an approved technology plan is not a requirement for eligibility for reimbursement for long distance services only under an FRN.

Respectfully submitted,



Bernice H. Taylor  
Acting Director of the Department of  
Communication Services/Municipal Telephone Exchange

## **Application Process Finding # 1**

### **Topic:**

Technology Plan Approval

### **Criteria:**

Per FCC Rule 54.504(b)(2)(v), the Beneficiary must submit a Technology Plan to the Maryland Department of Education every three years for approval and the budget for E-Rate equipment and services must be approved prior to the submission of the FCC Form 471.

### **Conditions:**

The Beneficiary submitted the FCC Form 471 on January 17, 2002. The Beneficiary did not have an approved Technology Plan, within the three year window, for the funding year under audit. The Beneficiary's Technology Plan was approved on May 7, 1998.

On April 29, 2003, the Maryland Department of Education approved a Technology Plan which included the fiscal years 2002 through 2007. However, the plan was approved subsequently to the Beneficiary submitting the FCC Form 471 and receiving and approved FCC Form 486 #231180 on November 11, 2002.

### **Effect:**

Total FY 2002 disbursed funds of \$4,098,573.54.

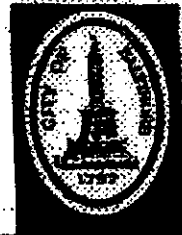
Funds associated with FCC Form 486 #231180 are \$1,770,594.

### **Recommendations:**

KPMG recommends that Baltimore City Public School System adhere to the FCC requirement to update the technology plan every three years and also have an approved technology plan prior to the submission of the FCC Forms 471 and 486.

NAME & TITLE	John R. Miller, CPPO City Purchasing Agent
AGENCY NAME & ADDRESS	Bureau of Purchases 111 N. Calvert Street, Baltimore MD
SUBJECT	Title: PROVIDE LONG DISTANCE TELEPHONE SERVICE Contract No. BP-10099 and Control No. R-163551 Account No. 2039-133-001-00-384

CITY OF  
BALTIMORE  
**MEMO**



DATE: August 19, 1998

TO

Honorable President and Members  
Of the Board of Estimates

Dear President and Members:

ACTION REQUESTED OF B/E:

Approve an award to the low bidder, ATX Telecommunications Services, Ltd., 50 Monument Road, Balz Cynwyd, PA 19004.

AMOUNT OF MONEY AND SOURCE OF FUNDS:

\$ 315,000.00 Terms: 2/20 Net 30, f.o.b. Delivered  
Account No. 2039-133-001-00-384

BACKGROUND/EXPLANATION:

Contract No. BP-10099

PROVIDE LONG DISTANCE TELEPHONE SERVICE FOR  
BALTIMORE CITY MUNICIPAL GOVERNMENT

On July 29, 1998, your Honorable Board opened bids on the above requirement contract. Four bids was received, twenty-seven were solicited.

The contract contains a provision for two additional two-year period extensions at the sole discretion of the City, under the existing terms and conditions.

The award amount is our estimated requirement for a period of two years. However, the contract provides that the vendor shall supply the City its entire requirements, more or less.

MBE/WBE PARTICIPATION:

E.O.C.O. Found Low Bid Vendor Non-Compliant

MBE: Automated Business Systems & Services	10%
Eagle Business Products	5%
Pulsar Data Systems, Inc.	5%
Total MBE:	20%

WBE: Broadway Electric Supply Co., was not certified at the bid opening day, however obtain certification on Aug. 13, 1998.

APPROVED BY THE BOARD OF ESTIMATES

Bernice W. Taylor 1998  
CLERK DATE

APPROVED FOR FUNDS  
CITY OF BALTIMORE

FRM: MK  
#087





ACCOUNT NAME	ACCOUNT#	PERIOD ENDING	DUE DATE	PAGE
City of Baltimore	4103963100	November 25, 2002	Due Upon Receipt	1

ACCOUNT SUMMARY		CURRENT CHARGES	
Previous Balance	40365.11	Private Line	1312.59
Payments Received	23075.46CR	Smartpack & CoreConnect Svcs	546.25
Balance Forward (Due Now)	17289.65	National Access Fees	5855.23
Current Charges	17063.21	Switched Long Distance	9349.14
Total Amount Due	34352.86	Total Current Charges	17063.21
----- Tax Summary -----			
Federal Tax & USF Contribution	1252.37		
State Tax	386.19		
Local Tax	52.68		
Total Taxes	1691.24		

### IMPORTANT INFORMATION

#### INTRODUCING ATX INSIGHT A New and Exciting Tool FREE for ATX Customers

ATX Insight is a powerful web-based account management tool which gives you the ability to generate near real-time traffic analysis reports and manage your ATX bills online.

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- Expert tools to help you design reports and sort options
- Easy downloading and report scheduling options
- Enhanced interface to submit repair requests
- Enhanced module for bill viewing

To view a demo of ATX Insight, or to register, go to <http://www.atxinsight.com>.

As always, you can contact your ATX Consultant or Client Care Specialist with questions. (If you were previously signed up for ATX RealIntelligence, you already have a valid user name and password for ATX Insight. To have your user name and password e-mailed to you, click on the Forgot your Password? link located on the ATX Insight Log On page.)

\*\*\*\*\* For Inquiries Call: Customer Service 1-800-220-4900 / Billing 1-800-355-BILL \*\*\*\*\*

Please detach and return this remittance with your payment

Account Number	Invoice Date	Payment Due Date	Total Amount Due
4103963100	November 25, 2002	Due Upon Receipt	<del>34,352.86</del>

☐ Check for change of address (complete reverse side)

Please send check to:

17,063.21



CITY OF BALTIMORE  
MR. FITZGERALD HOSKINS  
STE 100  
201 E BALTIMORE ST  
BALTIMORE MD 21202-1535



ATX Telecommunications Services  
P.O. Box 57194  
Philadelphia PA 19111-7194

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